

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF GEORGIA

WILLIAM H. CARTER,

Plaintiff,

v.

NCO FINANCIAL SYSTEMS, INC.,

Defendant.

CASE No. 3:11-CV-00107-DHB-WLB

**NCO'S REPLY BRIEF IN SUPPORT OF ITS**  
**MOTION TO EXTEND DISCOVERY**

NOW COMES Defendant, NCO Financial Systems, Inc. ("NCO"), by and through undersigned counsel, and submits this Reply brief in support of NCO's Motion to Extend Discovery.

**I. INTRODUCTION**

On October 25, 2012, NCO filed a motion to extend the discovery deadlines, as a result of outstanding discovery. (Dkt. No. 41). On October 31, 2012, NCO filed a supplement to its brief due to a family emergency. (Dkt. No. 43). Lead counsel, Keren E. Gesund had to suddenly leave on October 31, 2012 and it was not clear when she would return. On November 1, 2012, plaintiff filed an opposition to NCO's motion to extend discovery deadlines, arguing among other things<sup>1</sup>, that NCO had sufficient time to conclude discovery and that plaintiff will be prejudiced by extending the discovery deadlines. (Dkt.

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<sup>1</sup> Plaintiff also raises issues better brought in response to other motions. For example, plaintiff disputes the authenticity of the account notes NCO attached in support of its Motion for Summary Judgment. NCO redacted plaintiff's First Premier Bank account number on pages 3,4, and 8. Further, plaintiff remains dissatisfied with NCO's discovery responses and production of the protective order. Counsel spoke with plaintiff who notified her all he wanted changed was the first paragraph; counsel has since revised the protective order a second time.

No. 44). Ms. Gesund returned on November 5, 2012, rendering NCO's supplemental motion to extend discovery and plaintiff's supplemental opposition thereto, moot.

## **II. ARGUMENT**

### **a. Discovery is necessary and ongoing.**

Plaintiff believes NCO has already obtained all available information and is attempting to "drag out" the case. While it is true NCO subpoenaed Neustar Legal Compliance, Alltel Wireless' custodian of records on August 8, 2012, no records were produced. After numerous conversations with the custodian of records for Alltel, NCO broadened and re-issued the subpoena on October 16, 2012. NCO learned that the Alltel Wireless phone number was sold in 2011 to Allied Wireless Communications Corp. but may have previously belonged to Progressive Rural Telephone Co-Op, Inc. As such, NCO issued subpoenas to Progressive Rural Telephone and Allied Wireless. To date, no telephone carrier can show plaintiff's alleged cell phone number was in use at the time NCO placed its collection calls.

Most recently, NCO learned that there may be remaining Alltel subgroups (which NCO had believed were no longer in business) that might still retain records, including Alltel Communications, Alltel Mobile Communications of Southern Georgia, Inc. and Alltel Corporation (Delaware). NCO subpoenaed all of these entities on November 8, 2012.

NCO also subpoenaed the records of First Premier Bank. After speaking with the custodian of records for First Premier Bank's fraud department, NCO recently learned that a payment was made from a Wachovia bank account on the subject First Premier Bank account. It is our understanding Wachovia Bank was purchased by Wells Fargo Bank. As such, on November 7, 2012, NCO subpoenaed Wells Fargo Bank.

NCO has been pursuing discovery timely. Unfortunately, it took longer than anticipated to obtain the necessary documents and information from these third party corporations (many of which initially failed to comprehensively respond to NCO's subpoenas). Discovery was further complicated by the mergers and acquisitions of several telecommunications companies, making it difficult to identify which entity currently has the necessary documents and information.

NCO believes it has identified all of the corporate entities that might have retained relevant information and requests further time to pursue its most recent leads with Wachovia Bank, now Wells Fargo bank and the various telecommunications entities.

Plaintiff arguably also needs extended discovery deadlines. On November 8, 2012, plaintiff moved this court to issue a subpoena to First National Collection Bureau, Inc. Assuming this court issues plaintiff's subpoena, the date of production would likely fall after the close of discovery.

NCO has 2 pending dispositive motions as to plaintiffs' FCRA and FDCPA claim, which if ruled upon would result in a dismissal of two-thirds of plaintiff's complaint, thereby significantly narrowing the discovery issues and expense to NCO, which is significant.

**b. Plaintiff fails to identify how extending the discovery deadlines prejudices him.**

Plaintiff alleges extending the discovery deadlines will prejudice him by potentially denying him due process and a trial before a jury of his peers. It is not clear how or why that would happen. However, NCO has no intention of, and does not believe extending the discovery deadlines will, result in the denial of plaintiff's due process or a trial. Further,

NCO is not seeking an unreasonable amount of time in its extension. Lastly, trial has not been set.

### **III. CONCLUSION**

Based on the foregoing, NCO respectfully requests this Court grant NCO's motion, extend the discovery deadline to January 18, 2013, enter NCO's proposed amended scheduling order, and for such other relief as this Court deems proper.

Respectfully submitted,

**HALL, BOOTH, SMITH, P.C.**

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 9, 2012, I electronically filed the foregoing:

**NCO's Reply Brief in Support of its Motion to Extend Discovery** with the Clerk of Court for the Southern District of Georgia by using the CM/ECF System. I also certify that I have mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

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